FAO No.455 of 2006

Salochna and others Versus Rafiq Mohammad and others

Present: Mr.Vipin Mahajan, Advocate
for the appellants.

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**UMA NATH SINGH, J.(Oral)**

This FAO arises out of an award dated 17.8.2005 passed by learned Presiding Officer, Motor Accident Claims Tribunal (Fast Track Court), Ambala in MACT case No.212 of 2005 awarding a sum of Rs.4,56,000/- in the death case of a 38 years old vegetable vendor. It appears that on the date of accident i.e. 16.11.2002, deceased Sukhdev Singh was going from his village Tundla to Ambala Cantt. with vegetables in the Mule-cart on the left hand side of the road. One Tilak Raj son of Hari Chand was also sitting on the Mule-cart. At about 8.00 P.M., when they reached near Topkhana, Kalarheri Road, Ambala Cantt., the offending vehicle i.e. truck bearing registration No.HR-45-6074 being driven rashly and negligently appeared from behind and struck against the Cart from its back side. As a result, the cart was thrown in the pits on its left hand side and the deceased was also thrown out with great impact and, in the process sustained multiple injuries. His companion Tilak Raj also sustained injuries in that accident. One Surinder is said to have witnessed the occurrence. Ultimately, the offending vehicle was stopped after covering a long distance. However, the driver again sped up the vehicle by driving it rashly and negligently at that time, and struck against the round about of Commissioner Chowk, Ambala Cantt. The injured were taken to Civil Hospital, Ambala, and thereafter, deceased Sukhdev Singh was referred to

PGI Chandigarh. He is said to have remained lodged in the Hospital from 19.11.2002 to 3.12.2002 when he died in the night. On appreciation of evidence, the offending vehicle was found to be rash and negligent. An FIR (No.563 dated 19.11.2002, under Sections 279/337/427/304-A of the Indian Penal Code) was registered against the driver of the offending vehicle and the trial is still pending. Tilak Raj (PW3), the eye witness of the accident and also an injured-witness, has supported the claimants' case. Claimant Salochna is the widow of the deceased and she appeared in the witness box as PW2. She proved the age of her husband as 38 years and also claimed that he was earning Rs.8,000/- per month. The other claimants are four minor children including three daughters. That apart, mother Joginder Kaur is also one of the claimants. Mule also died and the cart was badly damaged. Dr. Shashi Tripathi, Medical Officer, Central Jail, Ambala (PW5) was posted in Civil Hospital, Ambala Cantt. On the date of accident, he had medically examined the deceased. However, as there was dearth of documentary evidence to prove the actual income of the deceased, taking into consideration the circumstances, the Tribunal assessed his income at a higher rate than that of a daily wager. The income has been assessed at Rs.3,000/- per month and a deduction of 1/4$^{th}$ has been done. Thus, monthly dependency has been worked out to be Rs.2,250/-. Though the claimants stated that they had spent Rs.50,000/- for medical treatment but as there was dearth of evidence on that account, the Tribunal awarded Rs.14,000/- towards medical expenses and Rs.3,000/- for transportation charges. The Tribunal has applied the multiplier of 16 after taking into consideration the age group of the deceased and also of the dependents. Thus, the total amount of Rs.4,56,000/- including the medical expenses, transportation and

funeral expenses has been awarded.

We do not find any scope for enhancement. Learned counsel submitted that though the Tribunal had agreed that the financial status of the deceased be assessed as a labourer, but has assessed his monthly income at Rs.3,000/-. Normally, in the case of daily wager, the income is assessed at Rs.2,400/- as a daily wager is not expected to work for all 30 days, whereas in the instant case, the assessed income is Rs.3,000/- per month. The Tribunal has also taken a reasonable view in deducting 1/4$^{th}$ income towards the personal expenses from that monthly income. Since the deceased was maintaining a Mule-cart and also visiting market in the course of his vegetable-vending business, it does not appear to be reasonable that he might be spending less than 1/4$^{th}$ of his earning. Accordingly. We do not find any infirmity in the award and the same is hereby affirmed. Resultantly, the FAO is dismissed being devoid of any merit.

( UMA NATH SINGH )
JUDGE

( S. D. ANAND )
JUDGE

August 11, 2006
SRM